

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE SOUTHERN DISTRICT OF TEXAS

3 GALVESTON DIVISION

4 TRAVIS JAMES MULLIS

3:13-cv-00121

5 VS.

February 12, 2016  
Galveston, Texas  
11:34:32 a.m.

6  
7 WILLIAM STEPHENS,  
Director, Texas Department of  
8 Criminal Justice, Correctional  
Institutional Division, et al  
9

10 TELEPHONE CONFERENCE

11 BEFORE THE HONORABLE GEORGE C. HANKS, JR.

12 UNITED STATES DISTRICT COURT

13 APPEARANCES:

14 Petitioner

Travis James Mullis  
(Telephonically)

15  
16 For the Petitioner

Shawn Nolan  
Federal Community Defender Office  
17 Eastern District of Pennsylvania  
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20 For the Respondent

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1 THE COURT: The next case on the Court's docket is  
2 Cause No. 3:13-cv-121, Mr. Mullis versus Stephens, et al.

3 Can all counsel on the line just introduce  
4 themselves to the Court and state the parties that they  
5 represent, starting with the Plaintiff?

6 MR. NOLAN: Good morning, Your Honor, this is Shawn  
7 Nolan with the Federal Community Defender Office, in  
8 Philadelphia, Capital Habeas Unit. I am the appointed co-  
9 counsel to Pete Walker, and we're working on the Petition.

10 THE COURT: Okay.

11 MR. OTTOWAY: Your Honor, this is Matthew Ottoway  
12 with the Texas Attorney General's Office. I represent the  
13 Director of TDCJ, CID, William Stephens, and I am on - her on  
14 behalf of the Respondent.

15 THE COURT: Okay.

16 And Mr. Mullis, are you also on the line, sir?

17 MR. MULLIS: Yes, Your Honor.

18 THE COURT: Okay. And if you could just introduce  
19 yourself for the record, sir, and just state your name.

20 MR. MULLIS: Travis James Mullis, Petitioner.

21 THE COURT: Okay.

22 Well, welcome, everyone to this hearing this  
23 morning. The first thing that I understand that we need to  
24 address is whether or not the Petitioner in this case should  
25 be allowed to move forward and waive this habeas review and

1 representation by counsel in this case.

2 I know the case is currently stayed. In order  
3 for me to proceed, the Court intends to remove the stay for  
4 this limited purpose.

5 Does anyone have any objection to that?

6 MR. NOLAN: No, Your Honor.

7 MR. OTTOWAY: The Respondent has no objection, Your  
8 Honor.

9 THE COURT: Okay. Great.

10 Well, the stay is removed for purposes of  
11 evaluating the Petitioner's request to waive habeas review and  
12 representation by counsel.

13 Pursuant to the Supreme Court holding in *Rees v.*  
14 *Peyton*, 384 U.S. 312, 314, the Court has a standard for  
15 assessing the competency of the death row inmate to further  
16 abandon appeals to a sentence. And under the standard, the  
17 Court needs to determine whether or not the Petitioner has the  
18 capacity to appreciate his position and make a rational choice  
19 with respect to continuing or abandoning further litigation,  
20 or on the other hand, whether he's suffering from mental  
21 disease, disorder or defect which will substantially affect  
22 his capacity in the premises.

23 So, in order to do that, Mr. Mullis, I just need  
24 to ask you a few questions, but before I do that I'd like to  
25 place you under oath.

1 Is that okay?

2 MR. MULLIS: Yes, Your Honor.

3 THE COURT: Okay. If you could, sir, just raise your  
4 right hand and be sworn.

5 (Petitioner sworn by the Court.)

6 MR. MULLIS: Yes, Your Honor.

7 THE COURT: Okay.

8 EXAMINATION

9 BY THE COURT:

10 Q Mr. Mullis, do you wish to continue -

11 MR. NOLAN: Your Honor, I'm sorry. May I - I'm very  
12 sorry to interrupt you, but if I could interject this - this  
13 is Mr. Nolan from Philadelphia on behalf of Mr. Mullis.

14 It would be our position that the Court should  
15 hold a hearing in open court where Mr. Mullis would be  
16 counseled face to face with the Court. We believe that  
17 comports with the Fifth Circuit law under *Lopez* and *Mata* and  
18 that the Court should have a pre-hearing which we could  
19 present expert testimony and other evidence in relation to Mr.  
20 Mullis' competency to - and voluntarily dismiss.

21 THE COURT: Oh, yes, sir. I completely agree with  
22 you. What I'm going to do this morning is ask some  
23 preliminary questions, and then based on those preliminary  
24 questions determine - and ask some questions of Mr. Mullis,  
25 you and the Respondent, and then based on those questions,

1 determine whether or not to appoint a psychologist to evaluate  
2 Mr. Mullis. And then, once that is done and I receive that  
3 report, then have an in person hearing to confirm what the  
4 psychologist said.

5 So, I completely agree with you. I'm just  
6 conducting a preliminary investigation with respect to the  
7 nature of the Petitioner's request.

8 MR. NOLAN: Understood, Your Honor.

9 Thank you.

10 THE COURT: Okay. But not a problem.

11 Thank you for raising that.

12 BY THE COURT:

13 Q Mr. Mullis, sir, do you wish to continue in your desire to  
14 dismiss your federal habeas petition?

15 A Yes, Your Honor.

16 Q And can you tell me why you wish to dismiss your habeas  
17 petition?

18 A Well, it really starts before I even turned myself in for  
19 this crime to the police. I made a conscience decision to  
20 walk before it or even announce what was being sought before  
21 the magnet that when I turned myself into the police, not  
22 knowing what my charge was at that time, whether it was first  
23 degree capital or even not knowing whether the crime had even  
24 been discovered, that I would accept my punishment for the  
25 crime, whatever the jury decided after a trial.

1                   Throughout the entire process, I made it clear  
2 to trial counsel that I intended to do so. And when it was  
3 brought to my attention that the charge was capital and that  
4 death was a possibility, I had made it clear that I - I  
5 actually anticipated that the court would probably - or that  
6 the State may seek death, and if that was the case then I  
7 would accept it. And the State was - or the jury was to rule  
8 in a way that would provide the right of parole, well, I would  
9 accept that that as well. And that really I had that in mind,  
10 my family, throughout the process.

11 Q     Okay.

12 A     So, once the jury - we went through the trial and the jury  
13 made that ruling, and the judge ultimately confirmed that the  
14 jury had expressed the issues in a way that provided for the  
15 death penalty I was completely accepting. I considered it and  
16 started to go through the process almost immediately of  
17 terminating my state representation counsel for the purposes  
18 of waiving it.

19 Q     Okay.

20                   Has anyone pressured you to dismiss your habeas  
21 petition in this matter?

22 A     No, Your Honor. In fact, it's actually been to the  
23 contrary; I've been pressured to continue forward.

24 Q     Okay. And do you under- -- do you understand the  
25 consequences of dismissing your federal petition in this case?

1 A Yes, sir. I do.

2 Q And what is your under-

3 A The -

4 Q I'm sorry.

5 A I'm sorry. Should this - I hate to interrupt - should  
6 this Court ultimately gain the confident you got away with, in  
7 effect that would - that would obviously terminate the appeal;  
8 it would terminate Mr. Nolan and Mr. Walker's representation  
9 as my counsel.

10 At that point - and the timeline is really  
11 dependent on the State's - the Attorney General's decision on  
12 how quickly to proceed. As early as the same date as that  
13 decision comes down or the same dates, weeks, months,  
14 depending on their position, they can ultimately file with the  
15 state court to set an execution date because the appeal is no  
16 longer - is no longer going forward.

17 And at which point, I believe from Mr. Walker  
18 either provides more and especially current law provides it  
19 from the issuance of a death warrant they cannot set an  
20 execution date any earlier than at least ninety days from the  
21 initial hearing, which would allow me a ninety-day waiting  
22 period from the time of the death warrant being issued to the  
23 actual execution date or at a minimum.

24 And of course, through the whole process of the  
25 things that would happen to me within the TDC system once that



1 occurs.

2 Q Okay.

3 A Ultimately leading to my eventual execution on a date that  
4 the Court set.

5 Q Okay. So, you understand, sir, that after dismissing the  
6 federal petition the State will likely seek an execution date;  
7 you understand that?

8 A Yes, sir. I fully expect that they would do that as  
9 quickly and promptly as that is legally allowed.

10 Q Okay. And do you understand that after - you know, if the  
11 Court, after considering all the evidence decides to dismiss  
12 your petition, you will not likely be able to seek federal  
13 relief again?

14 A Yes, sir. And I had no - I would have no intent to do so.

15 Q Okay. And do you think you might change your mind after  
16 the Court has dismissed your Petition?

17 A No, Your Honor, I do not.

18 Q Okay. And do you understand that the dismissal will  
19 probably foreclose federal review of all claims, including the  
20 DNA issue your attorneys are currently pursuing?

21 A Yes, Your Honor. And that is - that is my full  
22 understanding, and I actually when the DNA issue was raised by  
23 Mr. Nolan prior to my filing I made it clear that I had no  
24 desire to investigate it, much less argue it.

25 Q Okay. Now, I just want to ask you a few questions about

1 your incarceration with TDCJ.

2 Have you been treated for mental illness while  
3 in TDCJ custody?

4 A No, sir. I have not.

5 Q Okay. And are you currently on any medication?

6 A No, sir.

7 Q And do you have suicidal thoughts or desire to kill  
8 yourself?

9 A No, sir.

10 Q Okay. And based on the things you've told me, do you wish  
11 to continue in your desire to terminate your federal  
12 representation in this case?

13 A Yes, Your Honor.

14 Q Okay. It seems like from our discussion you have a pretty  
15 good understanding of what's going to happen, you know, should  
16 the Court dismiss your Petition.

17 Let me ask you a little bit about your attorneys  
18 in this matter.

19 Do you understand what your attorney's job -  
20 your federal attorney's job is in this case?

21 A Yes, I do. Their job is, for all intents and purposes, is  
22 to represent me on appeal and ultimately, if possible, to seek  
23 - eventually getting rid of my death sentence, if they can  
24 acquire that or possibly getting, whether it's through a new  
25 conscience stay, a new trial or otherwise.

1 Q Okay. And do you understand that they're trying to  
2 represent your interest in this case?

3 A Yes, Your Honor, I do, although I would argue that at  
4 least under state law, that I have the legal authority to  
5 instruct them to proceed otherwise --

6 Q Okay.

7 A -- in, you know, a different direction.

8 Q Okay.

9 A Well, I don't know that the state law would apply in  
10 federal court.

11 Q Okay. And do you understand that after dismissing the  
12 federal attorneys you will then be in charge of your own legal  
13 proceedings?

14 A Yes, Your Honor.

15 Q Okay. And I know that you're pretty familiar, Mr. Mullis,  
16 with the law, but do you feel that you're familiar enough with  
17 the law to represent yourself should the Court decide to  
18 dismiss your federal attorneys?

19 A Yes, Your Honor.

20 Q Okay.

21 Mr. Nolan, counsel for Mr. Mullis, I just have a  
22 couple of questions to ask you before I proceed.

23 MR. NOLAN: Sure, Your Honor. Yes, sir.

24 THE COURT: THE Court has stayed this action for the  
25 exhaustion of the state court remedies. Can you tell me the

1 status of the state court case?

2 MR. NOLAN: Yes, Your Honor. We agreed and informed  
3 the Court in our administration filing with this Court that we  
4 had retained a new expert, a Mr. Libby (phonetic), presented  
5 with the DNA, and we had provided him with all of the  
6 information and we were able to get from the state lab - we  
7 were just recently told there is electronic data from the  
8 state lab that they will not provide us without court order.

9 So, we are praying with the Advocate's court  
10 for a court order to get those things and then these  
11 proceedings came up, so we haven't done anything further in  
12 that regard. We have not yet filed a petition in state court.

13 THE COURT: Okay.

14 If no state pleading has yet been filed, I  
15 understand, couldn't you really get a state action if the  
16 Court found that Mr. Mullis was not competent?

17 MR. NOLAN: If the Court found he was not competent -  
18 yes.

19 THE COURT: Okay.

20 MR. NOLAN: We could.

21 THE COURT: Okay.

22 And without divulging any protected information,  
23 sir, how is your relationship with Mr. Mullis?

24 MR. NOLAN: We spend a time a lot of time with Mr.  
25 Mullis, Your Honor. I would say that our relationship is

1 good. We have a number of people on our team here who visit  
2 him regularly.

3 THE COURT: Okay.

4 MR. NOLAN: And so, I would say that our relationship  
5 is good.

6 THE COURT: Okay.

7 And Mr. Mullis, can I just ask you the same  
8 question? I know I've asked your attorneys.

9 How is your relationship - how do you feel your  
10 relationship is with your counsel in this case?

11 MR. MULLIS: I would think it's perfectly fine, with  
12 the exception of the fact obviously we have a fundamental  
13 disagreement on my position, and -

14 THE COURT: Okay.

15 MR. MULLIS: -- they're obviously not happy with  
16 that.

17 THE COURT: Okay. I understand, sir. I understand.

18 Let me switch gears and ask questions of the  
19 Office of the Attorney General in this matter.

20 Counsel for the Respondent, does the Office of  
21 the Attorney General take any position on Mr. Mullis' motion  
22 to withdraw his federal petition?

23 MR. OTTOWAY: I think of it as insuring that there's  
24 a moderate hearing. I don't think I would be taking a  
25 position on it; it's got the appropriate procedures are

1 engaged here.

2 THE COURT: Okay.

3 As the Court proceeds with its competency  
4 inquiry in this case, will your offices agree to allow access  
5 to Mr. Mullis for a competency evaluation?

6 MR. OTTOWAY: Oh, I'm sorry.

7 THE COURT: It's okay.

8 MR. OTTOWAY: Okay. I - so long as it comports with  
9 TDCJ's general policy, I don't believe that that there's any  
10 impediment to having, you know, a psychologist go in there.

11 THE COURT: Okay. Can you just identify yourself for  
12 the record? I'm sorry. I just said, counsel for Respondent.

13 MR. OTTOWAY: I apologize. Matthew Ottoway for the  
14 Respondent.

15 THE COURT: Okay.

16 And with - will you coordinate with TDCJ for an  
17 in-court hearing to assess Mr. Mullis' demeanor, if the Court  
18 should order it?

19 MR. OTTOWAY: Absolutely, Your Honor.

20 THE COURT: Okay. Based on the information that was  
21 provided to me from the parties questioned by the Court, I  
22 feel that the Court needs to proceed with a further evaluation  
23 of Mr. Mullis' competency and a further analysis of his  
24 request to dismiss his federal habeas petition.

25 What I want to do is appoint a psychologist to

1 examine Mr. Mullis and, preferably, I would like to have that  
2 psychologist agreed by all the parties.

3 Does anyone have any suggestions as to who would  
4 be appropriate, or if you don't have a suggestion now, would  
5 you like time to try to come up with someone for the Court?

6 MR. NOLAN: Your Honor, if I could - this is Shawn  
7 Nolan. I could make a suggestion.

8 This case is a little different than the typical  
9 case where CJA counsel is appointed under 3599 and the Court  
10 has to provide funds for experts and things like that.

11 Because we are Federal Defender organization, we  
12 have been able to retain our own experts in this regard. In  
13 fact, one of those experts is Dr. Dudley. Dr. Dudley and I  
14 have been involved in this case from the beginning; he was  
15 retained at trial.

16 Since we were in the case, we retained him  
17 again. He has examined Mr. Mullis several times. He was  
18 examined approximately six months ago, and we are - we - I  
19 requested a report from him once these proceedings got started  
20 over the last couple of weeks. So, we're waiting for a report  
21 from Dr. Dudley.

22 But what we could do is get that report, provide  
23 that to the Court, and the state court determine if they would  
24 like to hire their own expert, rather than having to meet for  
25 a court-appointed expert.

1 THE COURT: Okay.

2 MR. OTTOWAY: Your Honor, I would object to that  
3 particular process. I believe that *Mata* envisions an  
4 independent court appointed expert that efforts to the Court  
5 provides a report to both parties and that a hearing is to be  
6 deemed after that.

7 THE COURT: I agree.

8 MR. NOLAN: Your Honor, Shawn Nolan for Petitioner,  
9 Your Honor.

10 In the process, I would argue that my client  
11 just does not suggest or we would let it fall rather on very,  
12 very timely, because I would proceed it thorough the Court for  
13 numerous experts and plead prior multiple, for each party to,  
14 I think, provide the Petitioner and to present their  
15 applications to the Court, as we've done it now.

16 We would like to - hold up here. So, I think we  
17 would be calling for the action of the state to restore, I  
18 believe, either the defense experts or either for the  
19 Petitioner's. They work for the state funds, just to be  
20 careful.

21 THE COURT: Okay.

22 MR. OTTOWAY: Well, I would point out to the Court -  
23 this is the Respondent again - that the most recent published  
24 opinion out of the Fifth Circuit endorsed a proceeding out of  
25 the Southern District - this is *Lopez v. Stephens* - where



1 there was a single expert appointed by the Court, a colloquy  
2 between the Court and the Petitioner, and that was sufficient  
3 for purposes of determining competency, Your Honor.

4 MR. NOLAN: I would bring back that what happened in  
5 that case, Your Honor, however, the difference so is that was  
6 CJA counsel. So, the court would have had to approve an  
7 expert in that case. And we are in a different situation;  
8 there has already been experts in this case, who can educate  
9 the Court; the Court with regards to Mr. Mullis' status.

10 THE COURT: Okay.

11 MR. MULLIS: Your Honor, may I - may I speak, Your  
12 Honor?

13 THE COURT: Oh, yes, sir.

14 MR. MULLIS: All right. First of all, the experts  
15 previously, with the exception of the visit by Mr. Dudley,  
16 Dr. Dudley, that Mr. Nolan referred to six months ago, all of  
17 those experts were brought in early on in this case, mostly  
18 before the petition was filed for the purposes of evaluating  
19 my competency at a particular moment in 2011, that the waiver  
20 of habeas counsel - or the waiver of - the decision allowing  
21 me to proceed, blocking habeas counsel from filing, would  
22 occur. They were not evaluating my competency at this moment  
23 and time for filing, nor was he evaluating - Mr. Dudley did it  
24 six months ago that was also prior to filing.

25 Competency is based on competency at the time of

1 the waiver, not seen the day of. In a modest decision, Mr.  
2 Mata, did the decision on waiving and his ruling on competence  
3 waivers back and forth. There were a period of years before  
4 we got the model precedence. So, it really would not be  
5 necessary rather than a competency several years ago.

6 As well, when Dr. Dudley came to speak to me six  
7 months ago, Dr. Dudley and I sat here in a contact visit in  
8 TDC, and Dr. Dudley expressed to me, specifically, as did  
9 counsel before he even came up here, that he was coming in a  
10 personal capacity to speak with me to check on my well-being.  
11 And he, Dr. Dudley, himself stated that he was not there in a  
12 professional capacity to evaluate me for anything.

13 THE COURT: Okay.

14 MR. MULLIS: Or that was my understanding on that  
15 last visit from Dr. Dudley it was not meant to be in a  
16 professional capacity.

17 So, I would argue - I'm sorry - I would argue  
18 they made the report he may submit based on that with it being  
19 a violation of my confidence of our discussion. Because he  
20 wasn't there in a professional capacity, as well as the fact  
21 that he's making claims by the bias of counsel, given their  
22 disagreement with my decision.

23 THE COURT: Okay.

24 Counsel, I've heard arguments from all the  
25 parties, and I understand the issue. I think that given the

1 weight of the decisions that Mr. Mullis is making here, as  
2 well as the Court's responsibilities, under *Rees v. Peyton* and  
3 *Mata v. Johnson*, I believe that a court appointed psychologist  
4 is necessary, so -

5 I understand the parties' arguments.  
6 Respectfully, I'm not going to choose anyone that's already  
7 evaluated Mr. Mullis in the past. I want someone to do it  
8 currently, and I want it to be someone who's appointed by the  
9 Court.

10 So, I will give the parties, I guess, until next  
11 Friday. I believe that's the 19<sup>th</sup> to provide me with names of  
12 psychologists that you believe - names and CVs of  
13 psychologists that you believe would be appropriate as a court  
14 appointed expert in this matter.

15 If you could agree on someone, that would be  
16 great, but it sounds like you're probably are not going to be  
17 able to do that.

18 So, if you can't agree, then submit names to me  
19 and then the Court will decide. And then -

20 MR. OTTOWAY: Your Honor, Matthew Ottoway for the  
21 Respondent. Do you have a numerical limitation on how many  
22 experts you'd like each side to provide the Court if we do not  
23 come to an agreement?

24 THE COURT: Let's say, three from each side.

25 MR. NOLAN: And, Your Honor - this is Mr. Nolan -

1 just to be clear, psychologists and not psychiatrists?

2 THE COURT: Right, psychologists.

3 MR. NOLAN: Okay.

4 THE COURT: Yes, sir, psychologists.

5 So, if you could do that by close of business,  
6 which is 5:00 p.m. next Friday. At that time, the Court will  
7 pick or decide on a psychologist and then order the evaluation  
8 to proceed, and then, once I enter that order then I'll decide  
9 when our next hearing on this matter should be.

10 And basically, I need to find out who it's going  
11 to be and then how long it's going to take them to perform the  
12 evaluation, look at the results and then at that point in time  
13 decide whether to proceed with this matter with an in person  
14 hearing as required by the Fifth Circuit and the Supreme  
15 Court.

16 So, is there anything else, counsel, that we  
17 need to address at this hearing, this preliminary hearing this  
18 morning?

19 MR. NOLAN: Your Honor - this is Mr. Nolan - just so  
20 I'm clear about what method. Should we be filing that as a  
21 motion to the Court by next Friday, but it just -

22 THE COURT: Yeah, that would be perfect, yes, sir.

23 MR. NOLAN: Also and perhaps we'll file a quick  
24 motion that must be agreed to by Mr. Ottoway in terms of some  
25 of the classification records; the TDCJ classification records

1 we have requested those and have been denied some records  
2 that, you know, we feel normally routine. And so, maybe the  
3 Court could order that we be provided with those records as  
4 well.

5 THE COURT: Okay.

6 MR. OTTOWAY: Your Honor, Respondent, Matthew  
7 Ottoway, I don't think we need an order on that. I will  
8 obtain all TDCJ records that we typically obtain and needed  
9 medical records by the state, Your Honor, that sort of thing,  
10 and I will provide an exact duplicate to opposing counsel.

11 THE COURT: Okay.

12 MR. NOLAN: Your Honor, I just want to - Mr. Nolan -  
13 just as to where we are as to what's been provided by them I  
14 think we can work that out down the line. But with our  
15 representative it would be a full time job; it would be such a  
16 tough job that we would object to the state and sort of  
17 provide our records to the experts in this case.

18 THE COURT: Okay. So, it's -

19 MR. OTTOWAY: Your Honor, I think - this is  
20 Respondent again - normally, when we got an independent court  
21 expert both parties are free to submit whatever records that  
22 they have - seem are relevant to the experts, then verbal  
23 consider them all.

24 THE COURT: Right.

25 MR. NOLAN: Okay.

1 THE COURT: So, it seems to me that this is something  
2 we can resolve once the expert has been selected, but also it  
3 sounds like the Respondent is going to get you the documents  
4 you need.

5 And if what you need, Mr. Nolan, isn't in those  
6 records, then you will be free to submit whatever  
7 documentation you believe that the expert should be reviewing.

8 MR. NOLAN: That's great. Thank you, Your Honor.

9 THE COURT: So, is there anything else, counsel?

10 Okay.

11 MR. NOLAN: No, not at this moment.

12 MR. OTTOWAY: With the Respondent, nothing else, Your  
13 Honor.

14 THE COURT: Okay. Counsel, thank you all for being  
15 available this afternoon. And I look forward to speaking with  
16 you again at our next hearing.

17 The hearing's adjourned.

18 Good luck, everyone,

19 MR. NOLAN: Thank you, Your Honor.

20 MR. MULLIS: Thank you, Your Honor.

21 MR. OTTOWAY: Thank you, Your Honor.

22 (Proceedings adjourned at 12:00:25 p.m.)  
23  
24  
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1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE SOUTHERN DISTRICT OF TEXAS  
3                   GALVESTON DIVISION  
4

5           I, Linda Griffin, court approved transcriber, certify that  
6 the foregoing is a correct transcript from the official  
7 electronic sound recording of the proceedings in the above-  
8 entitled matter.  
9

10   /s/ Linda Griffin  
11   Linda Griffin  
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March 11, 2016  
Date